

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY -2 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0425-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DEMALE MICHAEL CAREY,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20033750

Honorable Barbara Sattler, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Wanda K. Day

Tucson
Attorney for Petitioner

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement, petitioner Demale Carey was convicted in April 2004 of two counts of robbery and was sentenced to consecutive, aggravated terms of three years' imprisonment. Carey filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., raising a claim under *Blakely v. Washington*, 542 U.S. 296,

124 S. Ct. 2531 (2004), in his post-conviction petition. The trial court granted relief, and Carey was resentenced to the original terms of imprisonment in April 2005.

¶2 Carey subsequently filed a new petition for post-conviction relief, arguing his counsel was ineffective at resentencing because, according to Carey, he failed to fully develop as a mitigating factor Carey’s illegal drug use and resulting impairment. The trial court concluded Carey could not prevail on a claim of ineffective assistance, finding that counsel had adequately raised the factor at resentencing and that, even if the unsworn documents submitted with Carey’s petition were competent evidence, Carey had provided “no information that the Court did not already have at the time of resentencing.”

¶3 In his petition for review, Carey contends he was entitled to an evidentiary hearing to provide expert testimony about how his “long term drug abuse impaired his cognitive abilities.” As reflected in the court’s order denying relief, however, any such testimony would be “cumulative.” As the trial court explained: “The court was provided with detailed information regarding the Petitioner’s history of drug use. Counsel used this information at resentencing to argue that the Petitioner lacked the ability to appreciate the wrongfulness of his conduct, and that this, in turn, should be viewed as a mitigating factor.”

¶4 The trial court denied relief in a minute entry that clearly identified and addressed the issue raised and correctly ruled on it in a manner that will enable this and any other court in the future to understand its resolution. Accordingly, we adopt the court’s

ruling, having no reason to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Thus, although we grant review, we deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge